

76-1107/6

rec'd in ER 5/10/76

KIPPERMAN, SHAWN & KEKER
STEVEN M. KIPPERMAN
407 Sansome Street, Suite 400
San Francisco, California 94111
Telephone: (415) 788-2200

FRIEDMAN & SLOAN
680 Beach Street, Suite 436
San Francisco, California 94109
Telephone: (415) 776-3070

MARCUS S. TOPEL
Attorney at Law
360 Pine Street, Top Floor Suite
San Francisco, California 94104
Telephone: (415) 421-6140

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHANIE KIPPERMAN,)	
)	
Plaintiff,)	NO. C-75-1211 CBR
)	
vs.)	NOTICE OF MOTION
)	AND
JOHN McCONE, et al.,)	MOTION TO AMEND OR TO RECONSIDER
)	
Defendants.)	

TAKE NOTICE that on *May 27*, 1976,
at *9:00 A.M.*, in Courtroom No. 2, Plaintiff will move for an
order deleting from this court's typed Memorandum Opinion and
Order (filed April 28, 1976), the material commencing Page 14,
Line 1 and ending at Page 15, Line 7.

CLERK OF COURT

OBC

1 AFFIDAVIT OF STEVEN M. KIPPERMAN

2
3 STEVEN M. KIPPERMAN, being first duly sworn, deposes
4 and says:

5 I am co-counsel for Plaintiff in this action.

6 In the portion of the court's typed Memorandum Opinion
7 and Order referred to above (at Page 14, lines 10-13) appears the
8 following language:

9 . . . [T]he Court can only conclude
10 that this tactic ["the use of the Doe
11 pleading"] was adopted either for
dramatic effect or for delay, both
clearly impermissible objectives.

12 Affiant regrets that the Court came to such a conclusion for
13 neither "objective" was intended.^{1/} No dramatic effect was
14 sought or intended and no delay was sought or intended. On the
15 contrary, affiant and his law firm (and co-counsel) at every
16 stage pushed for the right to proceed, argued against the
17 defendants' motions for stays and delays, and promptly sought
18 to commence discovery. The court's conclusion is not a fair
19 interpretation of the record and unnecessarily imputes improper
20 motive to counsel who harbored none.

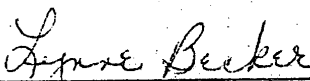

21 With respect to the asserted delay, and with all due
22 respect, counsel does not believe that any defendant in
23 C-75-1211 CBR was frustrated or delayed in meaningfully respond-
24 ing. The Government responded only after seeking itself to
25 delay and stay the civil action. Plaintiff's identity was dis-
26 closed as soon as all parties were before the court with counsel
27 and as soon as the court denied further stays.

28
29 1. Facts did justify the pleading and Plaintiff's apprehension
30 heretofore expressed. The Complaint was filed in good
31 faith. Hopefully this court will reconsider its language which
32 affiant feels was excessive and ill-chosen and which affiant
knows to be incorrect.

1 This is the first such accusation leveled at me by a
2 judge in seven years of active litigation practice. The "Doe"
3 pleading was in good faith; an amendment of the opinion is
4 appropriate.

5 
6 STEVEN M. KIPPERMAN

7
8 Subscribed and sworn to
9 before me this 6th day
of May, 1976.

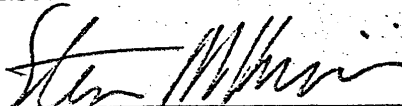
10 
11 NOTARY PUBLIC
12  OFFICIAL SEAL
13 LYNNE BECKER
14 NOTARY PUBLIC - CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
My Commission expires Nov. 25, 1979
15
16 AUTHORITIES

17 This motion is based upon FED. R. CIV. P. 52(b), 59(e),
18 60, and the court's inherent power to correct or reconsider its
non-final orders.

19 The undersigned hopes and trusts that, upon reflection,
20 the court will amend by deleting page 14:1 through Page 15:7.

21 Dated: May 6, 1976.

22
23 KIPPERMAN, SHAWN & KEKER
24 FRIEDMAN & SLOAN
25 MARCUS S. TOPEL

26 By 
27 Steven M. Kipperman
28 Attorneys for Plaintiffs
29
30
31
32

PROOF OF SERVICE BY MAIL

Approved For Release 2004/12/20 : CIA-RDP79M00467A000300130007-8

I am over the age of eighteen years and not a party to this action. My business address is:

407 Sansome Street, Suite 400
San Francisco, California 94111

On the date specified below, I served the attached NOTICE OF MOTION AND MOTION TO AMEND OR TO RECONSIDER by placing a true copy thereof (to which was attached a copy of this document) in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed to each of the following:

[See Attached List]

Executed on May 6, 1976, at San Francisco, California.

I, LYNNE BECKER, declare under penalty of perjury that the foregoing is true and correct.

Lynne Becker

Irwin Goldbloom
Civil Division
Department of Justice
Washington, D.C. 20530

Jacquelin Swords
Cadwalader, Wickersham & Taft
One Wall Street
New York, New York 10005

Plato Cacheris
Suite 205
1709 New York Avenue, NW
Washington, D.C. 20006

George Bush
Central Intelligence Agency
Washington, D.C.

Marcus S. Topel
360 Pine Street, Penthouse
San Francisco, California

Stanley J. Friedman
680 Beach Street, # 436
San Francisco, California

Alvin H. Goldstein
Tuckman, Goldstein & Phillips
555 California Street, Suite 3180
San Francisco, California 94104

James A. Bruen
Assistant U.S. Attorney
16th Floor -- U.S. Courthouse
450 Golden Gate Avenue
San Francisco, California 94102

Paul R. Haerle
Thelen, Marrin, Johnson & Bridges
2 Embarcadero Center
San Francisco, California 94111

Stephen S. Mayne
Dinkelspiel, Pelavin, Steefel
& Devitt
1 Embarcadero Center, 27th Floor
San Francisco, California 94111

Charles E. Hanger
Brobeck, Phleger & Harrison
111 Sutter Street
San Francisco, California 94111

John G. Milano
Milano & Cimmett
1545 Russ Building
235 Montgomery Street
San Francisco, California 94104

Richard Ernst
Ernst & Daniels
635 Sacramento Street
San Francisco, California 94111

Kenneth Adams
Dickstein, Shapiro & Morin
The Octagon Building
1735 New York Avenue, N.W.
Washington, D.C. 20006

Martin Quinn
Pettit, Evers & Martin
600 Montgomery Street
San Francisco, California 94111

Seymour Glanzer
Kenneth L. Adams
1735 New York Avenue, N.W.
Washington, D.C. 20006

Charles R. Donnenfeld
Rodney F. Page
Cameron M. Blake
Arent, Fox, Kintner, Plotkin
& Kahn
1815 H Street, N.W.
Washington, D.C. 20006

Donald J. Cohn
James B. Kearny
Webster & Sheffield
One Rockefeller Plaza
New York, New York 10002

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